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School Board of Richmond v. State Board of Education of Virginia

412 U.S. 92 (1973)

Paul J. Wahlbeck, George Washington University
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Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 26, 1973

PERSONAL

Re: No. 72-549 - School Board of the City of Richmond v. State Board of Education
No. 72-550 - Bradley v. State Board of Education

Dear Harry:

I visited with Byron about his remand in Richmond. He thinks lines can be crossed. I think some situation conceivably -- but rarely -- could arise in which no remedy would be meaningful without some crossing. In such case I might sustain it provided:

(a) no excessive bus transportation

(b) no objective of racial balance

(c) no inconsistency with Swann and prior cases.

Here I can assume, arguendo, that lines may be crossed in some cases in order to deal with an intractable dual school system, but never for the purpose of a "viable racial mix," i. e., racial balancing. If anyone tries to persuade me that Merhige did not mean racial balance, that is a lost cause. It pervades his entire opinion.

This memorandum goes only to you, following our library discussion yesterday.

Regards,

WEB

Mr. Justice Blackmun

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 26, 1973

Re: No. 72-549 - School Board of the City of Richmond v. State Board of Education
No. 72-550 - Bradley v. State Board of Education

MEMORANDUM TO THE CONFERENCE:

Further consideration leads me to think this case probably should be affirmed but I will defer my voting until I see what Byron has in mind. A remand that gives implied approval to the District Court action would give me a great deal of trouble.

We should also remember that when we discussed holding this case to be argued with the Detroit case it was urged that Richmond must be decided forthwith. A remand would plainly be at odds with speed disposition. Any remand would leave the present stay of the Distri Court order in effect so that we would wind up considering Richmon and Detroit together.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 10, 1973

11-2-3

Re: No. 72-549) - School Board of the City of Richmond v.
) State Board of Education of the Common-
) wealth of Virginia
)
No. 72-550) - Bradley v. State Board of Education of
) the Commonwealth of Virginia

MEMORANDUM TO THE CONFERENCE:

Byron and Bill Rehnquist have each developed analyses of this case and I agree with much of what each of them has said. I will not try to delineate precisely the area of agreement but simply state generally my approach.

1. I agree that there can be no absolute universal rule ... district or county lines must always be observed in fashioning a remedy.

2. The area in which some flexibility would be allowed ... not easy to define and I do not undertake to do so even in general terms.

3. Recognizing that there can be no absolute rule, I nevertheless see some purposes for which "jumping" such lines is not permissible.

4. In Swann v. Board of Education, 402 U.S. 23, I had thought we made it clear that remedial measures were not available to effect a racial balance -- something a school board could do if it chose.

5. I can hardly conceive of any proposition more clear from this massive record than that the District Judge "merged" the three districts to produce what he described, somewhat opaquely, as "a viable racial mix." That once good word "viable has been so bandied about in loose use that I am not sure just wh.. the District Judge had in mind in its adjectival use. For me it is indistinguishable from the "racial balance" we unanimously said was not constitutionally required and could not be ordered by a federal court.

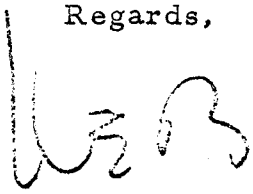
It may be useful to recall the Swann language at pp. 23-

> "Our objective in dealing with the issues presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools.
>
> . . . . .
>
> "The District Judge went on to acknowledge that variation 'from that norm may be unavoidable.' This contains intimations that the 'norm' is a fixed mathematical racial balance reflecting the pupil constituency of the system. If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole." [Emphasis added.]

6. The "merger" of the three districts was therefore directed by a purpose beyond the powers of a federal court and assuming that in some circumstances lines may be "jumped," that course may not be mandated to create racial balance under any name or disguise.

On my analysis, no remand is needed. Accepting most of what Byron's and Bill's memos tell us, I think we can appropriately affirm the Court of Appeals. I would certainly not support any idea of giving the District Judge an opportunity to distinguish "viable racial mix" from "racial balance," since it is clear, at least to me, that he embarked on an "end run" around Swann.

Regards,



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 3, 1973

Dear Byron:

I agree with your memo of April 30th in Richmond and Bradley school cases.

William O. Douglas

Mr. Justice White

cc: The Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

1/10/73

Nos. 72–549 AND 72–550

School Board of the City of Richmond, Virginia, et al., Petitioners, 72–549 v. State Board of Education of the Commonwealth of Virginia et al.	On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit.
Carolyn Bradley et al., Petitioners, 72–550 v. State Board of Education of the Commonwealth of Virginia et al.	

[May —, 1973]

Memorandum from MR. JUSTICE DOUGLAS.

The only question decided by the Court of Appeals was stated in its opinion as follows:

> "May a United States District Judge compel one of the States of the Union to restructure its internal government for the purpose of achieving racial balance in the assignment of pupils to the public schools? We think not, absent invidious discrimination in the establishment or maintenance of local governmental units, and accordingly reverse." 462 F. 2d 1058.

On that issue the Court of Appeals was plainly wrong.

We start with the Fourteenth Amendment whose commands run to the States. Any officer of the State, any

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 1, 1973

Re: Nos. 72-549 and 72-550 -- School Board of City of Richmond v. State Board of Education & Bradley v. State Board of Education

Dear Byron:

I agree with your suggested approach to the above.

Sincerely yours,

Bill

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 3, 1973

Re: No. 72-549, Richmond School Board v. Virginia Board of Education
No. 72-550, Bradley v. Virginia Board of Education

Dear Bill,

My views substantially coincide with those expressed in the memorandum you have circulated today.

Sincerely,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

MEMORANDUM TO THE CONFERENCE

RE: Nos. 72-549 & 72-550 -- Richmond School Cases.

From: BW
No date

Before we decide finally to dispose of this case by a 4 - 4 affirmance, I should like to suggest an approach not covered in the memoranda circulated by the Chief Justice, Bill Douglas, Byron and Bill Rehnquist. This approach is premised on the view that neither the District Court nor the Court of Appeals applied the correct standard of law in considering whether district lines could be disregarded in fashioning a remedy to redress the existing segregation of the Richmond school system.

I read the District Court to say that judicial power to fashion a desegregation plan reaching beyond a single school district rests upon two essential predicates: (1) that the public schools in the area had been purposefully segregated in violation of the Constitution as construed by Brown; and (2) that any form of remedial order confined to the limits of one district would be ineffective "to eliminate from the public schools all vestiges of state-imposed segregation." Swann, 402 U.S., at 15. The Court of Appeals seems to say, however, that in addition to these two predicates, there must also exist "invidious discrimination in the establishment or maintenance" of the district lines

WR

72 OT

File

No. 72-549 - School Board of the City of Richmond v. State Board of Education of the Commonwealth of Virginia

No. 72-550 - Bradley v. State Board of Education of the Commonwealth of Virginia

From: White, J.

Before us for review is the judgment of the Court of Appeals for the Fourth Circuit which reviewed the judgment of the District Court, vacated the Order of the District Court entered on January 10, 1972, and dismissed the suit as against named state officials and the school boards and supervisors of Henrico and Chesterfield Counties. I would in turn vacate the judgment of the Court of Appeals and remand the case for further proceedings. As Harry Blackmun suggested in his note of April 25th, I am stating in summary form the reasons for my vote.

The District Court had ordered the creation of a single school division composed of the City of Richmond and Henrico and Chesterfield Counties. The Court of Appeals read this Order and the supporting

be observed in fashioning remedies for invidious discriminations under the Fourteenth Amendment. If that was its ruling, in my view it was error; and I would in that event remand the case for reconsideration by the Court of Appeals, freed of its misconception of the controlling federal law.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 8, 1973

MEMORANDUM FOR THE CONFERENCE

A word in reply to Bill Rehnquist's circulation in the Richmond school case.

The Fourteenth Amendment's proscription of denial of equal protection of the laws applies to the States, as well as to individual school boards as instrumentalities of the "state." Where essential to correct the maintenance of a dual school system, it is my position that the remedial power of a federal district court is not necessarily limited by political subdivision lines. This does not mean that district lines should not be respected where reasonably adequate remedies may otherwise be fashioned; nor does it mean at this point that district lines should be crossed in this case.

In the present case, the unreversed findings of the District Court were that political subdivision lines throughout the Commonwealth of Virginia have "been ignored when necessary to serve public education policies, including

segregation." 338 F. Supp., at 113. In these circumstances, it makes little difference if the fact is that the lines of these particular districts were not crossed to any great extent. The point is that the findings of the District Court call into question the State's whole argument with respect to the sanctity of district lines. In the words of the District Court: "[The district lines] have never been obstacles for the travel of pupils under various schemes, some of them centrally administered, some of them overtly intended to promote the dual system." 338 F. Supp., at 83. The lines, even if never manipulated by the subject districts in this lawsuit, were never sacrosanct as a matter of state policy when segregation was the goal and should not stand as an insuperable barrier to an effective remedy in any of these three districts, each of which had officially maintained dual school systems. At the very least, if the Court of Appeals is wrong in thinking that in fashioning an effective remedy it was legally barred by the Tenth Amendment or otherwise from crossing district lines, must not the Court of Appeals have to overturn the District Court's findings as to the lack of integrity of school district lines in

Virginia if it is to rely on those lines as a barrier to an interdistrict remedy?

B.R.W.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 10, 1973

Re: No. 72-549; 72-550 - Board of Education Cases

Dear Byron:

After worrying with the law, the precedents and my conscience, I now find myself willing to agree with your memorandum in this case.

Sincerely,

T.M.

Mr. Justice White

cc: Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 25, 1973

Re: No. 72-549 - School Board of the City of Richmond
No. 72-550 - Bradley v. State Board of Education of the Commonwealth of Virginia

Dear Chief:

This note is meant to confirm my comments at conference yesterday. I was initially inclined to feel that these cases should be affirmed. Byron's suggestion of remand for reconsideration on a proper standard, however, continues to intrigue me. If he were willing to prepare a brief outline in writing along that line, I might well be with him.

Sincerely,

H.A.B.

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 11, 1973

Re: No. 72-549 - School Board v. State Board
No. 72-550 - Bradley v. State Board

Dear Bill:

This will confirm my statement in Conference this morning that generally I am in accord with the views you have expressed in the memorandum you circulated on the date of May 3.

Sincerely,

Harry

Mr. Justice Rehnquist

Copies to the Conference

5/3/73

No. 72-549 - School Board of the City of Richmond v. State Board of Education of the Commonwealth of Virginia

No. 72-550 - Bradley v. State Board of Education of the Commonwealth of Virginia

From: Rehnquist, J.

I had thought following Conference discussion of these cases and the exchange of memoranda afterward that I might be able to join a remand of these cases, which would basically disavow the Court of Appeals' reliance on the Tenth Amendment but otherwise articulate pretty much the views that Potter expressed at Conference, with which I found myself in agreement. The view which Byron expresses in his memorandum seems to me a good deal broader than what I had in mind, and so I thought some purpose might be served in setting forth my view in rough form. I think my approach would support either affirmance or a limited remand.

Insofar as the Court of Appeals, in reversing the judgment of the District Court, relied upon the Tenth Amendment, I disagree. Plaintiffs are asserting claims which arise under the Fourteenth Amendment, and certainly the Tenth Amendment does not override the Fourteenth. Taking the Court of Appeals' opinion as a whole, I do not actually think that the majority placed primary reliance on the Tenth Amendment,

WD